

Settlement of Matrimonial Property at the Time of Divorce: Need for Development of Law

Saema Jain*

1. Introduction

Marriage is an ancient social institution prevalent since centuries. It initially came into being to determine the paternity of a child conclusively and thus, only women were stopped to marry more than once. The men, on the other hand, were at liberty to possess as many wives as they wished. Also, under the English common law, the doctrine of coverture/ marital unity was applicable which provided that on marriage, a woman lost her identity and became one with her husband.¹ She was not permitted to enter into contracts and possess property in her name. Gradually, with the acceptance of the principle that equal rights must be given to both men and women, monogamy became the general rule and the doctrine of coverture/ marital unity was abolished. However, this principle of equal rights has been applied selectively and not in all spheres of life. Due to the inherent system of patriarchy ingrained in society, social and economic inequalities

1 This doctrine is described by William Blackstone in the words: “By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and cover, she performs every thing; and is therefore called in our law-french a feme-covert . . . under the protection and influence of her husband, her baron, or lord; and her condition during her marriage is called her coverture.” He went on to assert that “These are the chief legal effects of marriage during the coverture; upon which we may observe, that even the disabilities which the wife lies under are for the most part intended for her protection and benefit; so great a favorite is the female sex of the laws of England.” See William Blackstone, *Commentaries on the Laws of England Volume 1*, 343 (E. Dwyckinck, G. Long, Collins & Hannay, Collins & Co. and O. A. Roorback and John Grigg, Philadelphia, 1933)

*Judicial Officer (Delhi) and PhD Scholar at Faculty of Law, Delhi University